

APACHE CORPORATION

IBLA 99-109

Decided March 1, 2000

Appeal from a decision of the Chief, Royalty Valuation Division, Minerals Management Service, dismissing its appeal as untimely. MMS-98- 0135-IND.

Affirmed.

1. Federal Oil and Gas Royalty Management Act of 1982: Royalties—Oil and Gas Leases:
Royalties: Generally

An order issued by the Minerals Management Service to a royalty payor is considered to be served on the date it is received at the address of record as evidenced by a certified mail return receipt card signed by any employee or agent of the payor at that address.

2. Federal Oil and Gas Royalty Management Act of 1982: Royalties—Oil and Gas Leases:
Royalties: Generally—Rules of Practice: Appeals: Timely Filing

A decision dismissing an appeal to the Director, Minerals Management Service (or to the Commissioner of Indian Affairs with respect to Indian leases), filed more than 30 days after service of the order appealed from will be affirmed when the grace period is not applicable.

APPEARANCES: Laura Lindley, Esq., Denver, Colorado, and Richard Black, Esq., Houston, Texas, for appellant; Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Apache Corporation (Apache) has appealed from a July 15, 1998, decision of the Chief, Royalty Valuation Division (RVD), Minerals Management Service (MMS). That decision dismissed Apache's appeal from a May 27, 1998, "Order to Perform," because it was not timely filed in accordance with 30 C.F.R. § 290.3(a).

Regulation 30 C.F.R. § 290.5(b) provides that an appeal from a final order of an officer of MMS "must be filed" within the time provided by regulation at 30 C.F.R. § 290.3. The latter regulation provides that an appeal may be taken by filing a notice of appeal in the office of the official issuing the order "within 30 days from service of the order." 30 C.F.R. § 290.3(a)(1); see 30 C.F.R. § 290.6. The regulations further provide:

No extension of time will be granted for filing the notice of appeal. If the notice is filed after the grace period provided in [30 C.F.R.] § 290.5(b) * * * and the delay in filing is not waived * * *, the notice of appeal will not be considered and the case will be closed.

30 C.F.R. § 290.3(a)(2). Although the regulations authorize a 10-day grace period for filing in which an appeal may be considered timely, the authority for the grace period is expressly conditioned on a finding that the notice of appeal was transmitted to the proper office before the end of the 30-day appeal period. 30 C.F.R. § 290.5(b).

The record discloses that the Chief, RVD, issued a May 27, 1998, Order to Perform, which required Apache to perform "dual accounting" for the royalty valuation of natural gas produced from its Jicarilla Apache Tribal leases between January 1984 and June 1995, and to pay any additional royalties found to be due. The Order, which was specifically addressed to "Alicia (sic) Anderson, Apache Corporation," was sent to Apache at its record address in Houston, Texas, by certified mail, return receipt requested. Attached to the Order was a notification to Apache that it had the right to appeal to the Commissioner of Indian Affairs by filing a notice of appeal, which "must be filed within 30 days from receipt of this letter." ("Appeals Procedure and Bonding Requirements" (Encl. 11).) A copy of Apache's notice of appeal, dated June 30, 1998, was sent by facsimile machine and filed with the Chief, RVD, on that same date.

The Chief, RVD, found that the Order appealed was received by Apache on May 30, 1998, the date shown on the signed return receipt card which is in the case file. (Decision at 1.) Thus, she held that the notice of appeal which was both transmitted and filed on June 30, 1998, did not comply with the 30-day requirement. Concluding that the timely filing of an appeal, as required by 30 C.F.R. §§ 290.3(a) and 290.5(b), is necessary to establish the jurisdiction of the Commissioner to consider the appeal, the Chief, RVD, in her July 1998 decision, dismissed Apache's appeal from the May 1998 Order as untimely. Apache appealed therefrom.

In its statement of reasons for appeal (SOR), Apache indicates that the certified letter containing the order was received and signed for by a mail room employee who was working on a Saturday when its offices are officially closed. The certified letter containing the order was not received or opened by the addressee, Alycia Anderson, until the next working day, Monday, June 1, 1998. Apache argues that the regulations require a notice

of appeal to be filed with MMS within 30 days of "service" of the order. 30 C.F.R. § 290.3(a)(1). Apache notes that the regulation governing the method of service provides that an order will be served by sending the order by certified or registered mail, return receipt requested, to the addressee of record. 30 C.F.R. § 243.4(a). Further, Apache points out that the addressee of record for orders "is the position title, department name and address or individual name and address for the payor identified on the most recent Payor Confirmation Report * * * of a Payor Information Form (PIF) * * * returned by RMP [Royalty Management Program, MMS] to the payor for the Federal or Indian lease." 30 C.F.R. § 243.4(b)(7). Apache contends that the addressee of record, Alycia Anderson, was not served until June 1, 1998. In these circumstances, it argues that its notice of appeal was timely filed within 29 days thereafter, on June 30, 1998. ^{1/} In support of its contention, Apache cites the case of Animal Protection Institute of America, 124 IBLA 231 (1992), in which a BLM decision was sent to a party by facsimile machine at 5 p.m. on a Friday, but there was no evidence that a representative of the party actually received the decision on Friday evening.

Counsel for MMS has filed a response to Apache's SOR, arguing in favor of affirmance of the July 1998 decision of the Chief, RVD. Regardless of the duties of the employee who signed the receipt, MMS contends it is clear that Apache received the order on May 30.

[1] Regulation 30 C.F.R. § 290.5(b) states that a notice of appeal "must be filed within the time provided in [30 C.F.R.] § 290.3." That regulation, in turn, provides that a notice of appeal is to be filed "within 30 days from service of the order or decision." 30 C.F.R. § 290.3(a)(1). The relevant regulation regarding service of appealable orders requires service by certified or registered mail, return receipt requested, to the addressee of record. 30 C.F.R. § 243.4(a). As noted by Apache, the addressee of record for orders served on royalty payors includes the position title, department name and address, or individual name and address maintained in RMP records. 30 C.F.R. § 243.4(b)(7). The regulations further provide, however, that an order is considered served on the "date that it is received at the address of record established in accordance with paragraph (b) of this section as evidenced by a signed receipt of any person at that address." 30 C.F.R. § 243.4(c) (emphasis supplied). Thus, the date on which the return receipt card is signed establishes the date of service. While the regulation regarding service appears reasonably designed to ensure actual notice to the responsible official of the royalty payor, it is clear that, under that regulation, service is established when the document is received at the address of

^{1/} The notice of appeal recited that MMS' May 1998 Order had been "received by Apache June 1, 1998." (Letter to MMS from Apache, dated June 30, 1998.) According to Apache, this was the date the Order had in fact been delivered to Anderson, as reflected in its computerized "internal delivery record." (SOR at 1; see Ex. A attached to SOR.)

record by an employee or agent of the payor. Phillips Petroleum Co., 147 IBLA 363, 369-70 (1999); Murphy Oil Corp., 147 IBLA 40, 41 (1998); Enstar Corp., 102 IBLA 207, 209 (1988). The Phillips case, which involved an order received and signed for by the payor's employee at the post office on a Friday which was not date stamped and processed in the payor's mail room until the following Monday, is particularly relevant here. In that case, we rejected appellant's argument that service was accomplished only when the order was opened and date-stamped in payor's mail room. Phillips Petroleum Co., supra at 369-70.

This precedent is also consistent with the regulatory intent manifested in the rulemaking. See 55 Fed. Reg. 158-59 (Jan. 3, 1990) (Proposed rule); 56 Fed. Reg. 5946-49 (Feb. 14, 1991) (Final rule). Indeed, in promulgating 30 C.F.R. § 243.4(c), the Department expressly recognized that the document may have to be routed to the specific addressee of record at the record address, which may consume part of the 30-day appeal period, but concluded that the period nevertheless begins to run upon receipt at the record address. 55 Fed. Reg. at 159 ("It would be the responsibility of the addressee to ensure that the document is routed to the proper official within the company"); 56 Fed. Reg. at 5949 ("MMS considers the [30-day] time period for filing an appeal * * * to be adequate, including the time that it takes to route the document to the proper official. The addressee should be responsible for any delays in communication within its organization.").

The present appeal is distinguishable from cases in which a failure to properly address a document results in a failure of constructive service upon the addressee. See F. Howard Walsh, Jr., 93 IBLA 297, 307-08 (1986). We find this case to be also distinguishable from cases such as Animal Protection Institute of America, supra, cited by Apache. In that case, the decision of BLM was served upon a party by facsimile machine on a Friday afternoon, rather than by certified mail (return receipt requested) as provided by regulation. In that context, the Board was unable to find that the appeal was untimely because there was no way of knowing when the party had actual notice of the decision. This is not true of the case before us in which service was accomplished in accordance with the regulations and evidenced by the date the return receipt card was signed.

[2] It appears from the record that appellant's notice of appeal was not filed "within 30 days from service" of MMS' May 1998 Order to Perform, as required by 30 C.F.R. §§ 290.5(b) and 290.3(a), since service occurred on May 30, 1998, and the notice of appeal was not filed until June 30, 1998, the 31st day following the date of service. Unfortunately, the grace period is not applicable on the facts of this case, since the notice of appeal was also not transmitted until after the conclusion of the 30-day appeal period. 30 C.F.R. § 290.5(b). It is well settled that untimely appeals to the Director of MMS are properly dismissed pursuant to 30 C.F.R. § 290.3(a). Phillips Petroleum Co., supra at 369; Murphy Oil Corp., supra at 41. Therefore, we conclude that the Chief, RVD, in her

July 1998 Decision, properly dismissed Apache's appeal from her May 1998 Order to Perform, since it was not timely filed, as required by 30 C.F.R. §§ 290.5(b) and 290.3(a).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

